case of the *Deputy Public Prosecutor v. Tan Ah Guat*[1], where the learned Judge held that a certificate of a chemist was not admissible as evidence under Section 427 of the Criminal Procedure Code. I respectfully agree with the learned Judge in that matter.

The learned District Judge said in his statement of the case before this Court that the charges made were substantiated only by the admission of the Chemist's certificate. In view of my determination of the question in this case stated the said certificate should not have been admitted by the District Judge. In all the circumstances of the case it seems fit to me not to remit this matter to the learned District Judge but to make an order thereon forthwith. The order must be that the conviction is quashed and the sentence set aside. The fines, if paid, should be refunded.

Conviction Quashed.

CHUA TOH HUA AND ANOTHER v. LEE CHENG GIAM AND ANOTHER.

[Orig. Civil Juris. (Brown, J.) April 10, 1948]
[Singapore — Suit No. 69 of 1948]

Partnership action — Application to set aside writ on ground that proceedings ought to have been commenced in Kelantan — Forum Conveniens.

This was an application by the first defendant for an Order that a writ of Summons should be set aside. The action concerned a partnership business, which the first defendant contended was situate in Kelantan. The writ of Summons had been served on the first defendant in Singapore.

Held, (1) that to succeed in the application the first defendant must show (a) that no injustice would be done to the plaintiff by having the action tried in Kelantan, (b) that the defendant would be subject to such injustice in defending the action in Singapore as would amount to vexation and oppression; (2) that as the defendant had failed to show that he would be subjected to such injustice as would amount to vexation and oppression in defending the action the application must be dismissed.

Cases referred to :—

(1) *Ong Kin Hong v. Ong Cho Teck and others* (1935) 4 M.L.J. 142.
(2) *The Hagen* (1908) P. 189.
(3) *Logan v. Bank of Scotland* (1906) 1 K.B. 141.
(4) *In re Norton's Settlement* (1908) 1 Ch. 479.

SUMMONS IN CHAMBERS.

C. H. Smith for the Plaintiffs.

R. H. Green for the Defendant.

Brown, J. : — This is an interlocutory application by the first defendant for an Order that the writ be set aside. His first ground is that this Court is deprived of jurisdiction by section 2 (d) of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946. But I do not think that that section can be made to apply to the matters which are at present before the Court as they appear in the endorsement to the writ. Whatever may transpire as this action proceeds upon its course, at this stage it would in my opinion be premature to set aside the writ upon that ground.

The next ground is that the proceedings ought to have been commenced in Kelantan and that they are vexatious and oppressive and an abuse of the process of the Court. A considerable part of the applicant's argument was devoted to shewing that the partnership business is situate in Kelantan and not, as the plaintiff-respondent contends, partly in Kelantan and partly in Singapore. The affidavits reveal a conflict upon this question of fact. But I do not think it is necessary for me to decide the question, and for the purpose of my judgment I will assume against the plaintiff that the business is situate wholly in Kelantan.

Upon that assumption, it was not disputed that if the plaintiff had applied to serve the writ out of the jurisdiction the application would have failed. But here the writ was served upon the applicant when he was in Singapore, and the fact that the plaintiff could not have succeeded in obtaining an order for service out of the jurisdiction is not of itself a ground for setting aside a writ which has been duly served. Mr. Green argued that "the comparative advantage in furtherance of justice to all parties" demanded that the action should be tried in Kelantan, and he placed much reliance on a decision of Mills J. in *Ong Kin Hong v. Ong Cho Teck and Others*[1]. That was an interlocutory application, which was similar to the present one, to determine whether the action should be allowed to proceed in Singapore or whether the proceedings should be set aside on the ground that the F.M.S. was the proper forum. The learned Judge, after tabulating the facts in favour of each side, came to the conclusion that on balance "the comparative advantage in furtherance of justice to all parties" required that the action should be tried in the F.M.S. The expression which I have quoted, and which was adopted by the learned Judge was the criterion for his decision, was taken from the judgment of Kennedy L.J. in *The Hagen*[2]. But, with all respect, there seems to me to be an important distinction between the two cases. *The Hagen* was a case in which the

application was for leave to serve the writ out of the jurisdiction. In the case before Mills J., as in the present case, the application was to set aside a writ which had already been served.

It does not appear from the report of the judgment of Mills J. that the Court of Appeal decision in *Logan v. Bank of Scotland*[3] was cited to him. That was a case in which the application was to stay proceedings which had already been started. And the head-note to that case reads as follows :—

> The Court will stay an action, brought within the jurisdiction, in respect of a cause of action arising out of the jurisdiction, if satisfied that no injustice will be done thereby to the plaintiff, and that the defendant would be subject to such injustice in defending the action as would amount to vexation and oppression, to which he would not be subjected if an action were brought, in another and accessible Court, where the cause of action arose.

It seems to me that the principles by which I ought to be guided in determining this application are those laid down by the Court of Appeal in *Logan v. Bank of Scotland*[3]. Applying those principles, I think that the applicant must satisfy me :—

(1) That no injustice will be done to the plaintiff by having the action tried in Kelantan, and

(2) That the defendant would be subject to such injustice in defending the action in Singapore as would amount to vexation and oppression.

And in considering how far the applicant has satisfied me on those two points I must bear in mind the words of Vaughan Williams L.J. in *In re Norton's Settlement*[4] that :—

> The undoubted inherent jurisdiction of the Court to stay proceedings on the ground that they are an abuse of the process of the Court should always be exercised with the greatest care and caution.

Now this action arises out of a partnership which (I will assume) is carried on wholly in Kelantan. It is therefore the law of Kelantan that will apply. All the books and documents of the business are in Kelantan. As against that, there are 5 partners of whom only the applicant is resident in Kelantan. And of the assets in Kelantan, amounting to just under $289,000/- which are set out in para. 5 of the applicant's affidavit dated 3rd April 1948, $51,000/- is in respect of debts, $50,000/- is in repect of a claim for War Risks Insurance and $180,000/- is in respect of War Damage Claim, leaving in Kelantan only some $8,000/- in tangible assets. In Singapore there is a sum of $20,639/- deposited with the Standard Vacuum Oil Co., and a further sum of $22,870/- deposited with the Malayan Tobacco Distributors Ltd. That it will be inconvenient for the applicant and his witnesses to come to Singapore I do not doubt. But I cannot see that it will be any less inconvenient for the plaintiff and his witnesses to go to Kelantan. And there seems to me to be a wide difference between the facts in this case and the facts in *Logan v. Bank of Scotland*[3], which was one of the cases on which the applicant relied. In that case all the witnesses resided in Scotland, and none in England. In that case there would have been considerable difficulty, for reasons which were before the Court, in producing before a Court in England the numerous books, documents and papers which were relevant. I am not satisfied that there would be any comparable difficulty in producing in Singapore the documents which are material in this case. In that case there appeared a probability that a consideration of Scottish law as affecting the rights and liabilities of the respective parties would be involved and would have to be proved by expert evidence. In this case there is nothing to shew that the law of Kelantan relating to the issues to be tried is not the same as our law here. For all these reasons the applicant has not satisfied me that, in defending the action in Singapore, he would be subjected to such injustice as would amount to vexation and oppression.

But it was further argued that the circumstances in which the plaintiff succeeded in serving this writ on the applicant while on a temporary visit to Singapore, constituted an abuse of the process of the Court. The facts are that on the 23rd January 1948 the plaintiff's solicitors wrote to the applicant in Kelantan their first letter of demand, informing him that if he failed to give satisfaction they would take proceedings without further notice. On the 30th January the applicant's solicitors (in Singapore) wrote informing the plaintiff's solicitors that their letter had been handed to them with instruction to reply. On the 5th of February the plaintiff's solicitors wrote to the applicant's solicitors informing them that they were taking out the writ and asking them if they would accept service. On the following day the applicant's solicitors replied that they had no instructions to accept service. The writ was issued on the 17th February, and on the 18th the plaintiff's solicitors wrote to the applicant's solicitors informing them that the writ had been issued, and again asking if they would accept service, failing which they would apply for service out of the jurisdiction. On the same day the applicant's solicitors replied: "Our client is definitely coming to see us in the near future when we shall be in a position to reply to your letter." Taking advantage of the applicant's presence in Singapore to

consult his solicitors with regard to these proceedings, the writ having then been issued to the knowledge of all parties, the plaintiff caused the writ to be served on the applicant at his hotel on 24th February. Upon those facts I cannot see that the plaintiff's conduct in any way constituted an abuse of the process of the Court.

The application must be dismissed, and the costs of and incidental to it and all costs thrown away must be taxed and paid by the 1st defendant to the first plaintiff.

Application Dismissed.

GOH OON KEOW (f) AND ANOTHER v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) May 11, 1948]
[Singapore — Magistrate's Appeal No. 31 of 1948]

Criminal Procedure Code S. 187 — Withdrawal of Charges — Order of discharge — Whether order of discharge should be made amounting to acquittal or not.

In this case the learned Chief Justice on appeal altered an order of discharge not amounting to acquittal made by the learned District Judge to an order of discharge amounting to acquittal. He pointed out that the power given by Section 187 of the Criminal Procedure Code to the prosecution may, unless vigilance is displayed by Courts of Summary Jurisdiction, result in oppression and that it is the duty of such Courts to prevent this.

MAGISTRATE'S APPEAL.

D. K. Walters for the Appellants.

M. Buttrose (D. P. P.) for the Respondent.

Murray-Aynsley, C.J.:— In this case the appellants were charged with various offences against Proclamation No. 43. Certain charges were withdrawn and in respect of these the learned District Judge made an order of discharge not amounting to an acquittal. Against this order there is an appeal. As counsel for the prosecution has not opposed an order of discharge amounting to an acquittal, it is not necessary for me, in making such an order, to say anything about this particular case, but I think this is a suitable occasion to point out that the power given by section 187 of the Criminal Procedure Code to the presecution may, unless vigilance is displayed by Courts of summary jurisdiction, result in oppression and that it is the duty of such Courts to prevent this.

Appeal Allowed.

TAN KIM KANG v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) May, 19, 1948]
[Singapore — Magistrate's Appeal No. 28 of 1948]

Minor Offences Ordinance S. 34 — Fraudulent possession of property — Burden of proof.

In this case the appellant had been convicted under S. 34 of the Minor Offences Ordinance, although the property in question was not found in his possession.

Held, (1) that as the property in question was not found in the possession of the appellant the case did not come within the scope of subsection (1) of Section 34 of the Minor Offences Ordinance; (2) that the case did not come within subsections (2) and (3) as the person in whose possession the property was found was not charged and further there was no evidence that the property had been stolen or fraudulently obtained.

MAGISTRATE'S APPEAL.

R. Boswell for the appellant.

M. Buttrose (D.P.P.) for the respondent.

Murray-Aynsley, C.J.:—In this case the appellant was charged under section 34 of Cap. 24. The property in question was not found in the possession of the appellant and therefore the case did not come within the scope of sub-section (1). The case did not come within sub-sections (2) and (3) because the person in whose possession the property was found was not charged, and further there was no evidence that the property had been stolen or fraudulently obtained.

It should be noted that the burden of proof in sub-section (3) is quite different from that in sub-section (1). In sub-section (3) the burden of proof imposed on the prosecution is, to all intents and purposes, the same as in the case of a charge under section 411 of the Penal Code.

The conviction was, therefore, quashed.

Appeal Allowed.

H. MOHAMED SALLEH v. ANG CHAN SIONG.

[App. Civil Juris. (Murray-Aynsley, C.J.) May 20, 1948]
[Singapore — District Court Appeal No. 25 of 1947]

Landlord and Tenant — Whether payment of rent by cheque constitutes a valid tender.

This was an appeal from the decision of the Civil District Judge, Singapore. The landlord brought an action for ejectment against the defendant and relied on the contention that rent had been in arrear for fourteen days. The point in dispute was whether the tenant had made an effective tender of the rent. The rent was payable in advance for the period July 5th to August 4th 1947. On July 10th the attorney of the tenant sent by registered post to the landlord a cheque for the amount of the rent due. The cheque was drawn by the attorney. On a previous occasion in June a cheque had been sent by the tenant and accepted.

Held, (1) that a cheque is not good tender in the absence of an agreement to that effect; (2) that the previous acceptance of a cheque does not make a cheque good tender on subsequent occasions; (3) that there was no evidence to show that the landlord had waived objection to the form of payment; and (4) that therefore there was no effective tender of rent.

APPEAL FROM CIVIL DISTRICT JUDGE.

Claude da Silva for the Appellant.

John Laycock for the Respondent.

Murray-Aynsley, C. J. : — This is a landlord and tenant case. The landlord in ejectment proceedings relied on the fact that rent had been in arrear for 14 days. The point in dispute is whether the tenant made an effective tender of rent.